

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Flannery Gallagher	Team: Team # 3	CCRB Case #: 201305138	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/19/2013 5:00 PM	Location of Incident: Bedford Avenue near Clarkson Avenue	Precinct: 71	18 Mo. SOL 10/19/2014	EO SOL 10/19/2014	
Date/Time CV Reported Tue, 06/11/2013 9:50 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 06/11/2013 9:50 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Dmitry Brushnivsky	01417	936251	PBBS
2. POM Marc Lappas	20793	951898	PBBS
3. POM Thomas Lawson	17540	951903	PBBS
4. Officers			PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Savella	04134	952218	PBBS

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b)	
B. SGT Dmitry Brushnivsky	Force: Sgt. Dmitry Brushnivsky used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 6, 2013, § 87(2)(b) filed this complaint in person at the CCRB's office. On April 19, 2013, at approximately, 5:00 p.m., § 87(2)(b) was arrested in the vicinity of Bedford Avenue and Clarkson Avenue in Brooklyn by PO David Savella of Patrol Borough Brooklyn South. The following allegations resulted from the officers' actions:

Allegation A – Force: Officers used physical force against § 87(2)(b)

Allegation B – Force: Sgt. Dmitry Brushnivsky used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

This case was initially assigned to Investigator Stephanie Mleczkowski. On December 31, 2013, it was reassigned to the undersigned investigator for closure.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a black male who is § 87(2)(b)

Statements to Medical Personnel

§ 87(2)(b) was treated at § 87(2)(b) Hospital Center on § 87(2)(b) (encl. MR-1 – MR-17). § 87(2)(b) chief complaints were injuries to his face, left eye, lip, cheekbone, and right ribs as a result of being punched and kicked. § 87(2)(b) informed medical personnel that he was arrested by the NYPD and assaulted by officers.

Arrest Photograph

§ 87(2)(b) arrest photograph shows swelling below his left eye and swelling to his upper lip (encl. G-9).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on June 11, 2013 (encl. E-1 – E-9).

On April 19, 2013, at approximately 5:00 p.m., § 87(2)(b) was driving southbound on Bedford Avenue in Brooklyn when he noticed four officers heading northbound on Bedford Avenue in a marked RMP. The RMP continued to drive and made a U-turn. At Clarkson Avenue, the RMP pulled § 87(2)(b) over.

An officer, identified by the investigation as PO David Savella of Patrol Borough Brooklyn South, walked over to the open driver's window of the vehicle, asked § 87(2)(b) for his driver's license and he complied. § 87(2)(b) asked him why he had to provide this documentation and PO Savella responded "Don't worry about it." § 87(2)(b) later stated that

he told the officers “Why the f—are you stopping me?” When the investigator asked § 87(2)(b) to state exactly what he told the officer during the CCRB interview, he stated that he could not remember.

PO Savella then told § 87(2)(b) to exit the vehicle because he was being placed under arrest. An officer, identified by the investigation as Sgt. Dmitry Brushnivsky of Patrol Borough Brooklyn South, asked him to exit the vehicle between two and four times. § 87(2)(b) asked him why he was being arrested, and PO Savella told him not to worry about it. Sgt. Brushnivsky then put his hand inside of § 87(2)(b) vehicle, unlocked and opened the door and unbuckled § 87(2)(b) seatbelt. PO Savella then pushed his right forearm into the left side of § 87(2)(b) neck as Sgt. Brushnivsky restrained his right arm and in doing so tried to push his torso out of the driver’s side of the vehicle. An officer, identified by the investigation as PO Marc Lappas of Patrol Borough Brooklyn South, assisted PO Savella in pushing § 87(2)(b) out of the vehicle. § 87(2)(b) stated that he was resisting at this point, however later during his CCRB interview he denied doing so.

While § 87(2)(b) was standing in front of the driver’s side door of his vehicle, PO Savella punched § 87(2)(b) in his face and lip about three times. § 87(2)(b) was then brought to the ground by the officers and he landed on his stomach. Sgt. Brushnivsky kned § 87(2)(b) in the right side of his ribs while he was on the floor. § 87(2)(b) was then handcuffed and did not resist while he was being handcuffed. The officers then picked § 87(2)(b) up off the ground and brought him to the 71st Precinct stationhouse.

Witness: § 87(2)(b)

- § 87(2)(b) a black woman, was § 87(2)(b) at the time of the incident.

Telephone Statement

§ 87(2)(b) provided a phone statement to the investigator on August 20, 2013. She observed the officers stopping § 87(2)(b) in his vehicle. Initially, § 87(2)(b) was not compliant in exiting his vehicle; then the officers dragged him out of his car and handcuffed him. A white male officer began punching § 87(2)(b) in the face. § 87(2)(b) fell to ground, where officers stomped on him. § 87(2)(b) yelled out his father’s phone number and asked someone to call him, and § 87(2)(b) noted it and called § 87(2)(b) father. § 87(2)(b) eyes and lips were bloodied from being kned and stomped on his face. Officers took § 87(2)(b) away about fifteen minutes later. § 87(2)(b) did not know § 87(2)(b) prior to this incident.

Attempts to Contact Witness

- § 87(2)(b) identified § 87(2)(b) as a witness to this incident and provided telephone contact information for her. A call was made to § 87(2)(b) on August 16, 2013 and a detailed voicemail was left for her. A search of the Lexis Nexis database revealed a current address for § 87(2)(b) and confirmed her phone number. A please call letter was sent to her on August 16, 2013. On August 20, 2013, § 87(2)(b) provided the aforementioned telephone statement and scheduled an interview for August 30, 2013, an appointment she later missed. On September 4, 2013, the investigator left § 87(2)(b) a voice message and sent her a missed appointment letter. On September 13, 2013, the investigator called § 87(2)(b) and left her an additional message. On September 17, 2013, the investigator called § 87(2)(b) but was unable to leave a message. On that same date, § 87(2)(b) called the investigator and indicated she would call back to schedule an interview appointment. On September 23, 2013, a call was made to § 87(2)(b) but was disconnected. Please call letters were sent to § 87(2)(b) on September 23, 2013 and October 29, 2013. On January 30, 2014, a search of the New York City Department of Correction Inmate Look-up Service website confirmed that § 87(2)(b) has

not been incarcerated. To date, the CCRB has been unable to obtain a sworn statement from § 87(2)(b)

NYPD Statements

Witness Officer: PO DAVID SAVELLA

- *PO Savella is a § 87(2)(b).*
- *On the date of the incident, PO Savella was assigned as the Sergeant's Operator, from 1:30 p.m. to 10:05 p.m., in uniform and partnered with Sgt. Dmitry Brushnivsky, PO Thomas Lawson and PO Marc Lappas.*

Criminal Complaint and Arrest Reports

- PO Savella completed the arrest report for § 87(2)(b) which states, "At T/P/O, A/O observed deft. operating a 1998/Nissan/BK/4DSD/MI L/P # § 87(2)(b) while handling a portable electronic device in right hand and with both hands off wheel. Upon conducting a lawful car stop, deft. did become irate and uncooperative, refusing to provide documentation for the vehicle, and then refusing to exit the vehicle when ordered to by police. Upon exiting the vehicle, deft. stated, 'I'm going to punch you in the fucking face, You won't do shit,' and proceeded to aggressively turn on officers and flail arms, attempting to strike them (encl. G-10 – G-12)." § 87(2)(b) was charged with obstructing governmental administration in the 2nd degree, assault with intent to cause physical injury, resisting arrest, and driving while using a portable electronic device.

Memo Book:

PO Savella made the following entry in his memo book on the date of the incident: "17:45: car stop Bedford/Clarkson. 17:48: Perp. Refused to provide documentation for vehicle, refused to exit vehicle, and became aggressive after getting out, stating "I'm going to sue you, I'm going to punch you in the face. 1 under. 18:00: Perp. Lodged @ 71 Pct. 19:00: § 87(2)(b) encl. F-1 – F-3)." § 87(2)(b)

CCRB Statement:

PO David Savella was interviewed at the CCRB on September 16, 2013 (encl. F-4 – F-6) and provided the following testimony:

On April 19, 2013 at approximately 5:45 p.m., PO Savella was performing control while driving RMP numbered 8618. He was heading northbound on Bedford Avenue at Clarkson Avenue, when he noticed that § 87(2)(b) was driving while holding his cell phone. He observed that the vehicle had a NYS inspection sticker and Michigan license plates, making PO Savella suspicious that the car was either stolen or being used without authorization. PO Savella then made a U-turn, performed a car stop, and all four officers exited the RMP.

As soon as PO Savella walked up to § 87(2)(b) front driver door, § 87(2)(b) was immediately uncooperative and irate, stating through his completely open window, "This is crazy. I'm tired of this; I'm tired of being stopped. You guys are always harassing me." This is the first time that PO Savella interacted with § 87(2)(b). PO Savella requested his documents and after some hesitation, § 87(2)(b) furnished his driver's license. PO Savella then questioned him about the car. § 87(2)(b) refused to provide this documentation, loudly stated, "Fuck you," and told PO Savella that he did not need to provide him with such documentation. PO Savella asked him several times for this information, and § 87(2)(b) was not compliant. When § 87(2)(b) refused to provide that documentation, PO Savella deemed it necessary for him to exit the vehicle.

PO Savella asked § 87(2)(b) to exit the vehicle a few times, and § 87(2)(b) initially refused. PO Savella told § 87(2)(b) that he would open the vehicle door. § 87(2)(b) then voluntarily exited the vehicle. PO Savella believes that he made physical contact with § 87(2)(b) arm as he was exiting the vehicle, and § 87(2)(b) was resisting and being uncooperative. PO Savella could not describe the actions § 87(2)(b) made to resist arrest. PO Savella later stated that he did not remember exactly how § 87(2)(b) exited the vehicle.

At this point all of the officers went to the driver's side of the vehicle. § 87(2)(b) continued yelling at PO Savella, stating, "I'm gonna punch you in the face, and if you hit me I'm gonna sue you. You're a fucking faggot. You're not gonna do anything." PO Savella requested that he turn around and face the vehicle, and § 87(2)(b) was compliant. PO Savella began to pat down § 87(2)(b). Before PO Savella could ascertain whether § 87(2)(b) had any weapons on him, § 87(2)(b) swung his right arm or elbow towards PO Savella. PO Savella may have pushed his right forearm into the left side of § 87(2)(b) neck at this time in order to subdue him. PO Savella went to grab § 87(2)(b) and during the struggle, Sgt. Brushnivsky punched § 87(2)(b) causing a small laceration to his head.

Within fifteen or thirty seconds, all four officers brought § 87(2)(b) to the ground. § 87(2)(b) struggled while the officers tried to bring his arms together and handcuff him. § 87(2)(b) flailed his arms and pushed the officers away. It took the officers fifteen seconds to handcuff § 87(2)(b).

PO Savella did not knee § 87(2)(b) in his ribs while he was on the floor and did not see any other officer do so. He stated that if § 87(2)(b) sustained any injuries to his back or ribs it probably would have occurred while the officers were trying to restrain his hands and handcuff him. While § 87(2)(b) was on the floor, PO Savella believes that all of the officers were making physical contact with him.

During this interview, the investigator presented PO Savella with § 87(2)(b) photograph that was taken at the CCRB, as well as § 87(2)(b) arrest photograph. § 87(2)(b) arrest photograph there is swelling beneath his left eye. PO Savella did not recall exactly how this occurred, however he stated that § 87(2)(b) face may have made contact with the ground when the officers were struggling to bring him to the ground.

Subject Officer: PO THOMAS LAWSON

- PO Lawson is a § 87(2)(b).
- On the date of the incident, PO Lawson was assigned to foot post and RMP # 8618, from 1:30 p.m. to 11:05 p.m., in uniform, and partnered with PO Savella.
- Since the incident, PO Lawson has been transferred from Patrol Borough Brooklyn South to the 121st Precinct.

Memo Book:

PO Lawson did not have any entries in his memo book regarding the vehicle stop. His entry regarding § 87(2)(b) father is as follows: "20:52: Property released to father, § 87(2)(b) 1 Cell phone (LG Black)- Keys (car key, 10 keys)- Bottle opener (keychain) (encl. F-12 – F-14)"

CCRB Statement:

PO Lawson was interviewed at the CCRB on September 16, 2013 (encl. F-15 – F-17) and provided the following testimony:

On April 19, 2013 at approximately 5:45 p.m., PO Savella drove their RMP and conducted a car stop because § 87(2)(b) was on his cell phone. Additionally, § 87(2)(b) vehicle had Michigan license plates with New York State registration stickers.

All four officers exited the vehicle. PO Savella requested § 87(2)(b) vehicle documentation, including his license, registration and insurance three times, and § 87(2)(b) was immediately agitated, stating that he was going to “fuck us (the officers) up” and called them a “piece of shit.” Sgt. Brushnivsky told § 87(2)(b) to furnish the documentation three times and everything would go more smoothly. That conversation elapsed for thirty seconds. The officers again asked § 87(2)(b) for the aforementioned documentation and he responded in the same manner. The officers asked § 87(2)(b) to exit the car twice, and he then exited the car. § 87(2)(b) voluntarily exited the vehicle with his hands at his sides and the officers did not make any physical contact with him as he did so. PO Lawson did not see Sgt. Brushnivsky place his arms inside of the vehicle in order to remove § 87(2)(b). PO Savella told § 87(2)(b) to turn around and keep his hands out of his pockets, and turned § 87(2)(b) around so that his stomach faced the vehicle.

PO Savella started patting § 87(2)(b) pockets and did not indicate why he was doing so. § 87(2)(b) became irate, stating, “I’ll fuck you up,” and started swinging his arms around, held his arms up in the air, bladed his body, and took a fighting stance. He made contact with PO Savella’s upper torso. PO Lawson and PO Lappas approached § 87(2)(b). The officers were eventually able to bring him to the ground and handcuff him. PO Lawson used his body weight by placing his hands on his shoulders to bring § 87(2)(b) to the ground, both § 87(2)(b) and PO Lawson falling straight to the ground. PO Lawson could not recall who went to the ground first. § 87(2)(b) resisted arrest and flailed his arms to avoid being handcuffed as all of the officers told him to stop resisting. This struggle ensued for twenty seconds. Solely PO Lawson and PO Lappas brought § 87(2)(b) to the ground and handcuffed him. Sgt. Brushnivsky and PO Savella stood behind them, closer to the front of the vehicle, as § 87(2)(b) was apprehended. PO Lawson’s body weight was not used to keep § 87(2)(b) on the ground. PO Lappas had § 87(2)(b) right hand while PO Lawson had § 87(2)(b) left hand, which the officers brought together to handcuff him.

PO Lawson does not know what part of § 87(2)(b) body made contact with the ground or whether § 87(2)(b) face made contact with the ground. § 87(2)(b) yelled, “I’ll fuck you up! You can’t do this,” and called PO Savella a faggot during the struggle. PO Lawson did not push his right forearm into § 87(2)(b) neck, or see any officer do so. He did not see any officers restrain § 87(2)(b) arms and push his torso out of the vehicle. He did not punch § 87(2)(b) in his face and or lip and did not see any other officer do so. He did not knee, nor did he see any officers knee, § 87(2)(b) while he was on the floor. He did not see PO Savella or Sgt. Brushnivsky use any physical force against § 87(2)(b).

After being presented with two photographs of § 87(2)(b) PO Lawson still did not know if § 87(2)(b) sustained injuries during this incident or if he received medical treatment as a result

Subject Officer: SERGEANT DMITRY BRUSHNIVSKY

- Sgt. Brushnivsky is a § 87(2)(b).
- On the date of the incident, Sgt. Brushnivsky was assigned as the impact supervisor and worked with PO David Savella, PO Thomas Lawson and PO Marc Lappas, from 1:20 p.m. to 10:17 p.m. and was uniformed.
- Since the incident, Sgt. Brushnivsky has been transferred from Patrol Borough Brooklyn South to the 121st Precinct.

Memo Book:

Sgt. Brushnivsky made the following memo book entry on the date of the incident: “17:40: car stop in the vicinity of Bedford and Clarkson. Occupant of the vehicle became uncooperative. He refused to provide driver lic., paperwork for the vehicle-occupant became physically aggressive towards the officers and resisted arrest. As a result he sustained minor injury to his lip and face. Medical treatment form prepared. 17:48: under time, transport to 71 (encl. F-7 – F-8).”

CCRB Statement:

Sgt. Brushnivsky was interviewed at the CCRB on September 17, 2013 (encl. F-9 – F-11) and provided the following testimony:

On April 19, 2013 at approximately 5:40 p.m., PO Savella was driving RMP numbered 8616 with Sgt. Brushnivsky, PO Lappas and PO Lawson. PO Savella saw § 87(2)(b) vehicle driving in the vicinity of Clarkson and Bedford Avenues and stated that he wished to stop the vehicle because he observed a violation. Sgt. Brushnivsky could not recall the exact violation and did not see if § 87(2)(b) was on his telephone while driving. PO Savella then engaged the RMP’s lights and sirens in order to indicate for the vehicle to pull over.

All four officers then exited the RMP. Sgt. Brushnivsky believes that PO Savella requested his driver’s license and vehicle registration. § 87(2)(b) refused to provide any paperwork and was uncooperative. PO Savella and § 87(2)(b) conversation elapsed for approximately two minutes before it was deemed necessary that he should exit the vehicle. Either PO Savella or Sgt. Brushnivsky directed him to exit the vehicle.

Sgt. Brushnivsky originally stated that § 87(2)(b) was uncooperative in exiting the vehicle and later stated that § 87(2)(b) exited the vehicle voluntarily. § 87(2)(b) stepped out of the vehicle on his own and may have been guided by officers in doing so. Sgt. Brushnivsky could not recall, but probably made physical contact with § 87(2)(b) because his intention was to ensure that he did not have anything while inside of the vehicle. This was Sgt. Brushnivsky’s first attempt to place § 87(2)(b) under arrest.

It took approximately fifteen seconds for § 87(2)(b) to be removed from the vehicle and then he stood very close to his vehicle. PO Savella then attempted to frisk him. § 87(2)(b) became uncooperative and aggressively turned towards him, stating “I’m gonna fuck you up.” Sgt. Brushnivsky noted that while an officer is frisking a civilian, any sudden movement is construed as a violent action. Additionally, § 87(2)(b) swung his elbow towards PO Savella, which did not make contact with him.

PO Savella and Sgt. Brushnivsky then attempted to handcuff § 87(2)(b). Sgt. Brushnivsky made physical contact with § 87(2)(b) making contact with his face, and grabbed his foot and arm. Sgt. Brushnivsky punched § 87(2)(b) on an unknown side of his face, with a closed fist. He believes that he made contact with his lip area and that it was bleeding. It took approximately 10-30 seconds for the officers to place § 87(2)(b) on the ground. He did not know what parts of § 87(2)(b) body made contact with the ground. He did not believe that § 87(2)(b) face made contact with the ground first. He does not know where PO Lawson or PO Lappas were standing or if they were involved in placing § 87(2)(b) under arrest.

Sgt. Brushnivsky did not witness any officer push their left forearm into the right side of § 87(2)(b) neck. Sgt. Brushnivsky could not recall if he or any other officer restrained § 87(2)(b) right arm and pushed him out of the vehicle. While § 87(2)(b) was on the ground, Sgt. Brushnivsky could not recall if he or any other officers kicked § 87(2)(b) in his ribs. He was then transported to the 71st Precinct stationhouse.

Subject Officer: PO MARC LAPPAS

- PO Lappas is a § 87(2)(b).
- PO Lappas was assigned to Brooklyn South Impact Response Team Patrol, from 1:30 p.m. to 11:05 p.m. on April 19, 2013, in uniform and partnered with PO Savella.

Memo Book:

PO Lappas made the following memo book entry on his fly page on the date of the incident:

“Car stop IFO supermarket Bedford + Clarkson. § 87(2)(b) one under 1748 (encl. F-18 – F-20)”

CCRB Statement:

PO Marc Lappas was interviewed at the CCRB on October 22, 2013 (encl. F-21 – F-23) and provided the following testimony:

On April 19, 2013, at approximately 5:00 p.m., PO Savella was driving his RMP northbound when officers inside of the vehicle observed § 87(2)(b) violation as he was headed southbound on Bedford Avenue. PO Lappas did not observe the infraction that § 87(2)(b) made and could not recall any conversation that the officers had regarding why the vehicle was stopped during or after this incident. PO Lappas could not recall if any of the officers remarked that § 87(2)(b) was on his cell phone. All of the officers exited the RMP once § 87(2)(b) vehicle was stopped.

PO Savella asked § 87(2)(b) to furnish his driver's license, registration and insurance. PO Lappas could not hear § 87(2)(b) response to this request, but believes that he was not compliant because he was not originally informed of the reason for the vehicle stop. PO Lappas could not hear what § 87(2)(b) was saying to the officers, and does not know if he was yelling. After speaking with § 87(2)(b) for one or two minutes, PO Savella informed § 87(2)(b) that as soon as he furnished the aforementioned documentation, he would be informed of the reason for the vehicle stop. PO Savella asked § 87(2)(b) to step out of the vehicle, and § 87(2)(b) immediately complied. There was no struggle in getting § 87(2)(b) to exit the vehicle.

Once outside of the vehicle, § 87(2)(b) immediately made combative statements towards the officers, raised his voice and stated that he was going to sue them and that there was no reason for the stop. § 87(2)(b) then said to PO Savella, “I’m gonna fuck you up”.

PO Lappas had his back turned towards § 87(2)(b) Sgt. Brushnivsky and PO Savella. When he turned around to face the § 87(2)(b) he saw Sgt. Brushnivsky punch § 87(2)(b) in the left side of his face. PO Lappas did not punch § 87(2)(b) nor did he see any officers otherwise punch § 87(2)(b) PO Lappas did not observe any injuries to § 87(2)(b) At this time, § 87(2)(b) was clutching either PO Savella's or Sgt. Brushnivsky's shirt. Other than this, PO Lappas does not know if § 87(2)(b) arms made physical contact with the officers. § 87(2)(b) did not have the opportunity to punch, strike or kick any of the officers. § 87(2)(b) was combative and resisting, trying to break free from the officers. A struggle ensued between Sgt. Brushnivsky, PO Savella and § 87(2)(b)

PO Savella and Sgt. Brushnivsky brought § 87(2)(b) to the ground within a few seconds using the minimal necessary force including grabbing, and placed his hands behind his back. PO Lappas did not know what parts of § 87(2)(b) body made contact with the ground first, however he knows that his stomach was facing the ground. PO Lappas could not recall if § 87(2)(b) complained of being in pain or if he stated anything during the struggle. PO

Lappas could not recall if § 87(2)(b) called any of the officers a faggot. PO Lappas originally stood four or five feet away, and once § 87(2)(b) was on the ground or a few inches from it, PO Lappas held § 87(2)(b) left arm in place as PO Savella reached for his handcuffs. PO Lappas could not recall what happened once § 87(2)(b) was handcuffed on the floor. PO Lawson did not play any role in bringing him to the floor. PO Lawson had very little to do with the vehicle stop, did not speak to § 87(2)(b) and was the last officer involved in handcuffing § 87(2)(b).

PO Lappas did not and did not see any officers push their right forearm into the left side of § 87(2)(b) neck during this incident. PO Lappas did not and did not see any officers restrain § 87(2)(b) arms and push his torso out of the vehicle. He did not and did not see any officers knee § 87(2)(b) in his ribs while he was on the floor. PO Lappas did not know if § 87(2)(b) sustained injuries during the incident.

Medical Records

- § 87(2)(b) was treated at § 87(2)(b) Hospital Center on § 87(2)(b) (encl. MR-1 – MR-17). § 87(2)(b) was given Motrin and a Tetanus vaccine, and when he was discharged, he was advised to take Motrin as needed for pain. Medical personnel observed contusions to § 87(2)(b) ribs and face, an abrasion to his inner lip, swelling to his upper lip and left cheek, and a scratch below his left eye. The medical records revealed no dislocations or fractures.

NYPD Documents

Patrol Borough Brooklyn South Roll Call

The Patrol Borough Brooklyn South Roll Call for the Impact Response Team on April 19, 2013 confirmed that PO David Savella, Sgt. Dmitry Brushnivsky, PO Marc Lappas, and PO Thomas Lawson were all assigned to RMP #8618 (encl. G-2 – G-6)

Patrol Borough Brooklyn South Command Log

According to the Command Log for April 19, 2013, § 87(2)(b) was lodged into the stationhouse at 5:55 p.m. His condition was listed as apparently normal. PO Lawson was listed as his arresting officer (encl. G-7).

§ 87(2)(b)

§ 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 12, 2014 with regard to the incident, which is more than six months past the 90-day filing deadline (encl. J-10).

§ 87(2)(b)

§ 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (B-4).

Subject Officer CCRB History

- Sgt. Dmitry Brushnivsky has been a member of the service for eight years, and there are no substantiated CCRB allegations against him (encl B-1).
- PO Marc Lappas and PO Lawson have been members of the service for two years, and there are no substantiated CCRB allegations against them (B-2 – B-3).

Conclusion

Identification of Subject Officers

- During the course of the investigation, § 87(2)(b) was not able to identify which officers “kneed,” “pushed,” or “brought him to the ground.” Consequently, Allegation A is being pleaded against officers.
- Though § 87(2)(b) alleged that PO Savella punched him in the face, Allegation B is being pleaded against Sgt. Brushnivsky. § 87(2)(b) learned the officers’ names from his lawyer, and did not observe or obtain them during the incident. PO Savella was listed as § 87(2)(b) arresting officer, and it is likely that § 87(2)(b) or his lawyer obtained his name from these documents in the arrest paperwork. Sgt. Brushnivsky admitted to punching § 87(2)(b) and PO Savella stated that he observed Sgt. Brushnivsky punch § 87(2)(b).
- Actions attributed to “PO Lampert” by § 87(2)(b) in his testimony, have been attributed to Sgt. Brushnivsky based on his physical description and corresponding pedigree information. Furthermore, § 87(2)(b) admitted being uncertain of PO Lampert’s name, but said that it was, “Russian-sounding.” § 87(2)(b) stated that PO Lampert’s name was provided to him by his lawyer.

Investigative Findings and Recommendations

Allegation A – Force: Officers used physical force against § 87(2)(b)

Allegation B – Force: Sgt. Dmitry Brushnivsky used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was verbally combative and uncooperative by refusing officers’ directives during this incident. It is undisputed that officers made physical contact with § 87(2)(b) and that he was punched by Sgt. Brushnivsky and brought to the ground as officers placed him under arrest. § 87(2)(g)

It is not disputed amongst the officers that § 87(2)(b) resisted arrest, and all officers admit to making physical contact with § 87(2)(b) while placing him under arrest. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) arrest photograph shows injuries that are consistent with the complainant’s and officers’ statements about the type of force that was used. § 87(2)(b) was treated at § 87(2)(b) Hospital Center, where he told medical personnel that he had been punched and kicked. These medical documents are the only source that indicates § 87(2)(b) was kicked during the incident. He did not allege being kicked at any other point throughout the investigation. § 87(2)(b) was treated for contusions to his ribs and face, an abrasion to his inner lip, swelling to his upper lip and left cheek, and a scratch below his left eye. These injuries are consistent with being punched in the face and taken to the ground.

NYPD Patrol Guide Procedure 203-11, states that officers can use minimum force necessary to effect an arrest of a violent or resisting individual (encl. A-1 – A-2).

§ 87(2)(b), § 87(2)(g)

[Redacted text block]

§ 87(2)(b), § 87(4-b), § 87(2)(g)

[Redacted text block]

Team: _____

Investigator:	_____	<u>Flannery Gallagher</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date